value of the Dupont pen. The district judge did his best on the materials before him. I find no merit in this ground of appeal.

There was also an appeal on the order for costs. It was contended that the defendants had succeeded on several issues and that the district judge should either decide that costs be borne equally or in some other portion or that the defendants be entitled to costs on the issues they had succeeded in. However, this was not the point argued before the district judge. His notes of evidence showed that counsel for the defendants had argued that there should be fixed costs and not taxed costs. The district judge exercised his discretion to award the taxed costs. I am not prepared to accept a different argument on appeal, especially when costs is a matter of discretion and the district judge has exercised his discretion on a basis different from which it is now being argued. In any case, on taxation, I would expect the taxing registrar to take into account, when taxing the bill of costs of the plaintiff, any claim for costs on issues in respect of which he has failed.

For the above reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Cooma Lau & Loh.*

Reported by *S Surenthiraraj*

MALAYSIAN REPORTS

Karpal Singh & Anor v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL REFERENCE NO 06-2-90
ABDUL HAMID OMAR LP, AJAIB SINGH AND JEMURI SERJAN SCJJ
24 JUNE 1991

Criminal Procedure — Frivolous proceedings — General inherent power of court to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings — Power of Attorney General as public prosecutor — Procedure in summary trials — Power of High Court in case of obvious abuses or other forms of material defects — Criminal Procedure Code (FMS Cap 6), ss 5 & 173 — Federal Constitution, art 145(3)

English Law — Application in criminal procedure — Criminal Procedure Code (FMS Cap 6), s 5

In this case the applicants had been charged in the magistrate's court on 22 April 1987 with separate offences under the Police Act 1967, the first applicant for having participated in an assembly in a public place without a licence from the officer-in-charge of the police district and the second applicant for convening the assembly without a licence. The offences were alleged to have been committed on 30 August 1984.

The initial complaint which gave rise to the charges was lodged on 30 August 1984. Warrants were issued by the magistrate, Kampar for the arrest of the applicants but the warrants were set aside by the High Court. The second applicant, it appeared, had applied for a licence to hold the assembly but the OCPD had referred the application to the chief police officer, Perak, who refused it. It was subsequently held by the Supreme Court on 13 March 1986 that the chief police officer had no authority to refuse the licence as the licensing authority was the OCPD (see *P Patto* v *Chief Police Officer, Perak & Ors*[4]). After that the prosecution preferred charges against each of the applicants. The case was mentioned before the magistrate on two occasions in April 1987 and fixed for hearing on 4 June 1987. The case was postponed a number of times at the request of the first applicant, who was engaged in the High Court. On 19 November 1987, the court was told that both the applicants were detained under the Internal Security Act 1960. It was only on 1 December 1988 that the cases were fixed for hearing on 18 July 1989. At the hearing, the applicants raised a preliminary objection contending that the proceedings against them amounted to oppression and prejudice and that the court had a general and inherent power to protect its process from abuse and to strike out the proceedings. The application was rejected by the magistrate and subsequently by the High Court on an application for revision. The applicants then referred the following question of law for the consideration of the Supreme Court:

'Whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings.'

Held, deciding the question as follows:

(1) The question referred to the court is ambiguous and badly framed. However, to the specific question asked, the

answer is 'No' in the specific circumstances of the case under reference.

(2) Article 145(3) of the Federal Constitution states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings in the Syariah Court etc. The discretion of the Attorney General is unfettered and cannot be challenged and substituted by that of the courts.

(3) Section 173 of the Criminal Procedure Code stipulates the whole procedure in summary trials in the subordinate courts, including magistrate's courts. There is no provision in the Code for striking out proceedings or acquittal without hearing all the evidence the prosecution has the capacity to offer, even though adjournments are needed.

(4) However, in the case of obvious abuses or other forms of material defects, it cannot be said that the High Court does not possess the powers to do the right and to undo wrong in the course of administration.

(5) In this case there is no obstacle for the case against the accused to be continued in the normal manner. It would be for the Attorney General under the particular circumstances of the case, to consider exercising his discretion to enter a *nolle prosequi* in view of the delay and other circumstances.

[Bahasa Malaysia summary

Di dalam kes ini pemohon-pemohon telah dituduh di mahkamah magistret pada 22 April 1987 dengan tuduhan berasingan di bawah Akta Polis 1967, pemohon yang pertama oleh kerana ia mengambil bahagian di dalam perjumpaan di tempat awam tanpa mendapat kebenaran dari pegawai menjaga daerah polis dan pemohon yang kedua kerana menganjurkan perjumpaan itu tanpa lesen. Kesalahan-kesalahan itu dikatakan berlaku pada 30 Ogos 1984.

Aduan yang asal yang menimbulkan tuduhan-tuduhan itu telah dibuat pada 30 Ogos 1984. Waran telah dikeluarkan oleh magistret Kampar untuk penangkapan pemohon-pemohon akan tetapi waran-waran itu telah diketepikan oleh Mahkamah Tinggi. Pemohon kedua dikatakan telah memohon mendapat lesen untuk mengadakan perjumpaan itu akan tetapi OCPD telah merujuk permohonan itu kepada ketua pegawai polis, Perak, yang telah menolak permohonan itu. Kemudiannya, telah diputuskan oleh Mahkamah Agung bahawa ketua pegawai polis tidak berkuasa menolak permohonan itu, oleh kerana pegawai yang berkuasa mengeluarkan lesen ialah OCPD (lihat *P Patto* v *Chief Police Officer, Perak & Ors*[4]). Selepas itu pihak pendakwa telah membawa tuduhan terhadap pemohon-pemohon itu. Kes itu telah disebut di hadapan magistret beberapa kali pada April 1987 dan telah ditetapkan perbicaraannya pada 4 Jun 1987. Kes itu telah ditangguhkan atas permintaan pemohon yang pertama, oleh kerana ia terlibat sebagai peguam dalam kes di hadapan Mahkamah Tinggi. Pada 19 November 1987 mahkamah diberitahu kedua-dua pemohon telah ditahan di bawah Akta Keselamatan Didalam Negeri 1960. Akhirnya hanya pada 1 Disember 1988 barulah kes itu ditetapkan untuk dibicarakan pada 18 Jun 1989. Di masa perbicaraan itu pemohon telah membawa bantahan permulaan dan berhujah bahawa prosiding terhadap mereka membawa penganiayaan dan mudarat dan mahkamah mempunyai kuasa am dan yang sedia ada untuk melindung proses mahkamah disalahgunakan dan membatalkan prosiding itu. Permohonan sedemikian itu telah ditolak oleh magistret dan kemudiannya di Mahkamah Tinggi apabila permohonan kajian semula dibuat. Pemohon-pemohon kemudiannya merujukkan soalan undang-undang berikut untuk pertimbangan Mahkamah Agung:

'Samada mahkamah mempunyai kuasa am yang seida ada bagi mengawal prosesnya tidak disalahgunakan dan untuk melindung orang yang dituduh dari penganiayaan atau mudarat dengan membatalkan prosiding yang sia-sia.'

Diputuskan, menjawab soalan itu seperti berikut:

(1) Soalan yang dirujukkan depada mahkamah adalah kabur dan tidak dirangka dengan baik. Walaubagaimanapun jawapan kepada soalan khusus itu ialah 'Tidak' atas keadaan khusus kes yang berkenaan.

(2) Perkara 145(3) Perlembagaan Persekutuan memperuntukkan bahawa Peguam Negara mempunyai kuasa, dan kuasa itu, hendaklah dijalankan menurut budibicaranya membawa, menjalankan atau memberhentikan apa-apa prosiding mengenai sesuatu kesalahan, lain daripada prosiding di hadapan Mahkamah Syariah dll. Budibicara yang terletakhak kepada Peguam Negara itu adalah muktamad dan tidak boleh disoal atau digantikan oleh budibicara mahkamah.

(3) Seksyen 173 Kanun Acara Jenayah memperuntukkan acara keseluruhannya di perbicaraan terus di hadapan mahkamah rendah, termasuk mahkamah magistret. Tidak terdapat peruntukan di dalam Kanun itu bagi membatalkan prosiding atau bagi pembebasan tanpa mendengar semua keterangan yang pihak pendakwa berupaya kemukakan, sungguhpun memerlukan penundaan.

(4) Walaubagaimanapun di dalam mana-mana kes di mana terdapat penyalahgunaan kuasa yang nyata atau lain-lain jenis kecacatan yang penting, tidaklah boleh dikatakan Mahkamah Tinggi tidak mempunyai kuasa bagi menjalankan apa yang betul dan melucutkan kesalahan di dalam perjalanan pentadbiran.

(5) Di dalam kes inti tidak ada apa-apa halangan bagi kes terhadap orang-orang yang dituduh diteruskan seperti biasa. Terpulanglah kepada Peguam Negara dengan memandang kepada keadaan khusus kes ini, menimbangkan penggunaan budibicaranya memasukkan *'nolle prosequi'* oleh kerana kelengahan dan lain-lain keadaan kes ini.]

Cases referred to

1 *PP* v *Lee Tin Bau* [1985] 1 MLJ 388 (distd)
2 *Connelly* v *DPP* [1964] 2 All ER 401 (refd)
3 *DPP* v *Humphrys* [1976] 2 All ER 497 (refd)
4 *P Patto* v *Chief Police Officer, Perak & Ors* [1986] 2 MLJ 204 (refd)
5 *PP* v *Zainuddin & Anor* [1986] 2 MLJ 100 (refd)
6 *Chu Chee Peng* vv *PP* [1973] 2 MLJ 35 (refd)
7 *R* v *London County Quarter Sessions Chairman, ex p Downes* (1953) 37 Cr App R, 148; [1953] 2 All ER 750 (refd)
8 *Long bin Samat & Ors* v *PP* [1974] 2 MLJ 152 (refd)
9 *PP* v *Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116 (refd)
10 *Poh Cho Ching* v *PP* [1982] 1 MLJ 86 (refd)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 5, 173
Federal Constitution art 145(3)

Karpal Singh for the applicants.
Stanley Isaacs (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Abdul Hamid Omar LP (delivering the judgment of the court): This is a reference under s 66 of the Courts of Judicature Act 1964 pursuant to leave granted to the applicants, Mr Karpal Singh and Mr P Patto, to refer for our consideration a question of law as follows:

> Whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings.

The applicants were charged before the magistrate's court, Kampar on 22 April 1987 with separate offences under s 27(5)(a) punishable under s 27(8) of the Police Act 1967; Mr Karpal Singh for having participated in an assembly in a public place without a licence from the officer-in-charge of Police District, Kampar and Mr Patto for convening an assembly in a public place without a licence from the officer-in-charge of Police District, Kampar. The offences were alleged to have been committed on 30 August 1984.

At the hearing before the magistrate on 18 July 1987, the applicants raised a preliminary objection contending that the proceedings against them amounted to oppression and in all the circumstances of the case the prosecution was oppressive and repugnant to the good administration of justice and the court had a general and inherent power to protect its process from abuse and that power must include a power to safeguard an accused person from oppression or prejudice and that accordingly the court had the power to strike out proceedings.

The magistrate ruled that there was no provision in the Criminal Procedure Code (FMS Cap 6) ('the Code') which empowered the court to make an order striking out proceedings on grounds submitted by them. She rejected the application and decided the trial should proceed. The applicants then asked that the matter be referred to the High Court for a revision. Peh Swee Chin J, exercising his revisionary power, found no merit in the submission made by the applicants. Accordingly, he ordered the case be remitted back to the magistrate for it to be heard. The learned judge nevertheless observed that the applicants were entitled to raise the question of oppression at the close of the prosecution case for the court to decide.

At the hearing before this court, Mr Karpal Singh submitted with added force the same argument canvassed in the court below. He cited three cases in support of his contention, first, *PP* v *Lee Tin Bau*,[1] second, *Connelly* v *DPP*[2] and third, *DPP* v *Humphrys*.[3] He argued that it is within the court's inherent jurisdiction to strike out the proceedings. Mr Stanley Isaacs appeared for the public prosecutor. He submitted that the chronology of events has shown that there was no oppression or harassment on the part of the prosecution. The delay was partly due to two main factors, namely, first the issue relating to setting aside of the warrant of arrest which led to an appeal to the Supreme Court (*P Patto* v *Chief Police Officer, Perak & Ors*[4]) and second, the detention of the applicants under the Internal Security Act 1960. He maintained that the prosecution was diligently prosecuted.

He also submitted that the magistrate had no inherent power under the law to discharge in the sense of striking out proceedings. The nearest provision is s 173(g) of the Code. Mr Isaacs also drew this court's attention to s 5 and s 376 of the Code as well as art 145(3) of the Federal Constitution.

He then invited this court to consider *PP* v *Zainuddin*,[5] a Supreme Court decision on the procedure in summary trials before the subordinate courts. And finally it was Mr Isaacs' contention that the court is not entitled to deny the right of the public prosecutor to prosecute as the discretion of the public prosecutor is absolute.

Basically the sole issue before this court revolves on a primary question of law and not of facts. The sole question that calls for determination (although couched vaguely) is whether a magistrate's court in criminal proceedings has power, inherent or otherwise to strike out proceedings against an accused person on grounds of oppression and/or harassment. Before we proceed to deal with this question, it seems proper that we look at the facts which Mr Karpal Singh said constituted delay, harassment and an abuse of the process of the court.

The initial complaint which purportedly gave rise to the charges against both Mr P Patto and Mr Karpal Singh was lodged on 30 August 1984 at Gopeng (Gopeng Report No 1011/84). On 1 October 1985, pursuant to an application by the prosecution, warrants were issued by the magistrate, Kampar for the arrest of the applicants. These warrants were, however, set aside by Anuar J at the Ipoh High Court on 26 October 1985.

The complaint made against Mr P Patto was for convening an assembly in a public place without licence from the officer-in-charge of Police District (OCPD), Kampar and against Mr Karpal Singh for having participated in an assembly in a public place without a licence from the OCPD, Kampar.

It is revealed that Mr P Patto did apply for a licence to hold a solidarity dinner and lion dance on 31 August 1984 to the OCPD, Kampar but was told by the OCPD, Kampar by letter that his application had been forwarded to the Contingent Police Headquarters for consideration by the chief police officer, Perak. The applicants were dissatisfied with the decision of the OCPD, Kampar and therefore decided to file a writ for a declaration asking the High Court to decide as to who is the proper authority to issue the licence. The writ

was filed in early September 1984. On 22 April 1985, Anuar J heard the case and refused to make the declaration sought by the applicants. He gave a written decision on 23 May 1985.

The applicants appealed to the Supreme Court against Anuar J's decision and the case was heard on 13 March 1986 in Penang and a written decision was issued on 8 April 1986 (*P Patto* v *Chief Police Officer, Perak & Ors*[4]). In allowing the appeal, the Supreme Court held that:

(1) the third respondent as the licensing authority under the provisions of s 27(2) of the Police Act 1967 had abdicated his functions by transmitting the applications for consideration and determination by the first and second respondents;
(2) the first respondent is the appellate authority to entertain an appeal against the refusal or the licence but in this case he purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal;
(3) the refusal of the licences applied for by the appellant was therefore made by the wrong authority;
(4) the intimation to the appellant of the refusal of the applications was made in a wholly unreasonable period of time so as to preclude any appeal by him against it.

On 17 March 1987, subsequent to the decision of the Supreme Court, the prosecution preferred separate charges against each of the applicants. The case came up for mention before the magistrate on 22 and 24 April 1987. The applicants indicated that they would raise a preliminary objection on grounds of oppression and prejudice. The case was fixed for 4 June 1987. On that date Mr Karpal Singh, for reasons known to him, withdrew his intention to raise the preliminary objection which is now repeated vigorously. The case was then postponed to 29 and 30 July 1987 for hearing but was postponed to 19, 20 and 21 November 1987 at the request of Mr Karpal Singh who was engaged in the High Court, Kuala Lumpur on an election petition. On 19 November 1987 the court was told that both the applicants were detained under the Internal Security Act 1960. The case came up for mention on 18 March 1988 and 25 May 1988. As both applicants were still under detention, the court postponed the case sine die. However, on 1 December 1988 the prosecution informed the court they would proceed with the case on 18 July 1989. At the hearing before the magistrate, Mr Karpal Singh appeared in person and also represented Mr P Patto.

At the hearing, he raised the preliminary objection which was overruled by the magistrate. Subsequently the matter came up for revision by the Ipoh High Court. Following the decision of Peh Swee Chin J the point of law was referred to us under s 66 of the Courts of Judicature Act 1964, for which we granted leave on 23 April 1990.

At the outset, we should express our disappointment at the vague wordings of the terms of reference. Whatever be the answer to the question, whether on grounds of harassment or frivolous proceedings that the case should be struck out, the matter is hardly of any public importance in our view. The phraseology 'striking out' and any order for striking out in the legal context can be with or without liberty and such being the case, what is the practical effect even if proceedings are struck out?

However, we do not wish to quibble on what may turn out to be a purely academic exercise. The basic issue raised seems to be what powers a court, especially at the first instance, has at a trial in the event of the prosecutor not being able to adduce all the evidence he wants or the defendant, by counsel, prays orally to strike out proceedings or to acquit the accused on grounds of abuse or harassment and so forth. Should the court acquit the accused or discharge him not amounting to an acquittal or strike out the case without hearing all evidence which could be adduced? In this regard all or most of the points have been thoroughly canvassed and decided by our courts in the past. In the case of *PP* v *Zainuddin & Anor*,[5] the issue for determination was 'In view of art (3) of the Federal Constitution and s 173(c) and (f) of the Code, whether it is right for a magistrate in a summary trial to acquit and discharge an accused person without hearing any evidence for the prosecution.' In that case, the answer was in the negative. In a similar reference, *Chu Chee Peng* v *PP*,[6] the then Federal Court held that a discharge of the accused without hearing all the evidence which the prosecutor can adduce is legally sustainable but does not amount to an acquittal. Assuming the applicants have genuinely raised a novel point of law involving public interest, his main argument rests on the common law enumerated in *Connelly* v *DPP*,[2] and *DPP* v *Humphrys*.[3] We are of the opinion, for the following reasons, that reliance on English cases is irrelevant for our purpose. In *Connelly*'s case,[2] although the House of Lords agreed that the court has no inherent power to prevent its process from being abused, differing views were expressed upon the scope of the court's discretion. Until 1964 or thereabout, the English law was:

> Once an indictment is before the court, the accused must be arraigned and tried thereon unless (a) on motion to quash or demurrer pleaded it is held defective in substance or form and not amended; (b) matter in bar is pleaded and the plea is tried or confirmed in favour of the accused; (c) a nolle prosequi is entered by the Attorney General, which cannot be done before the indictment is found; or (d) if the indictment discloses an offence which a particular court has no jurisdiction to try ...

per Lord Goddard CJ at p 151 in *R* v *London County Quarter Sessions Chairman, ex p Downes*.[7]

However, Lord Pearce in *Connelly* v *DPP*,[2] at p 449, did not seem to accept the restrictive words of Lord Goddard CJ in *R* v *London County Quarter Sessions Chairman*[7] at p 151. He had this to say:

> The court has, I think, a power to apply, in the exercise of its judicial discretion, the broader principles to cases that do not fit the actual pleas and a duty to stop a prosecution which on the facts offends against those principles and creates abuse and injustice. A fortiori, when an order is made by consent of both parties that the indictment shall remain on the file and shall not be prosecuted without the leave of the court, the matter is within the court's judicial discretion. I certainly do not accept the Crown's contention, as I understood it, that the prosecution can thereafter proceed with the indictment even if the judge in a proper exercise of his discretion refuses leave.

Generally, the procedure would appear to be that the accused should apply by motion to a High Court to quash the indictment and he then has to prove either on the face of indictment or by an affidavit that the charge has been preferred without jurisdiction or has a substantial and apparent defect. We are not aware of any court acting merely on the oral statement of a counsel.

Perhaps it is appropriate that we now pause to consider the constitutional consequences of relying on the English common law concept. Unlike UK, the Constitution of the Federation which is a written law is specifically declared to be the supreme law of the land. Also, it is to be noted that UK has no criminal procedure code as enacted by our legislature. For our immediate purpose we wish to refer to art 145(3) of the Constitution which states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before Syariah Court etc. ... The discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the court's. The reasoning and logic behind such contention is well illustrated in the cases of *PP* v *Lee Tin Bau*,[1] *Long bin Samat & Ors* v *PP*,[8] *PP* v *Datuk Harun bin Haji Idris and Ors*[9] and *Poh Cho Ching* v *PP*.[10] In the circumstances, it is superfluous to reiterate the same points.

Another relevant consideration is our Criminal Procedure Code and its relationship with present English common law. The Criminal Procedure Code (Amendments and Extension) Act 1976, which came into force on 9 January 1976 is applicable to the whole of Malaysia, amending and codifying the previous separate legislations. The Code, as its name suggests was intended to be an exhaustive pronouncement of the criminal procedure. Section 5 of the Code is indicative of the principles to be applied by local courts. This section provides for English law relating to criminal procedure to be applied when there does not exist any special provision on the matter either in the Code or any other existing law. English law is applicable insofar as it does not 'conflict or be inconsistent with this Code and can be made auxiliary thereto.' The pronouncement and effect of the Code leave no lacuna under normal circumstances.

Section 173 of the Code stipulates the whole procedure in summary trials in the subordinate courts including magistrate courts. The opening para (a) provides that the court should ensure the proper framing of the charge, which must be explained to and understood by the accused before his plea is taken. The next para (b) relates to convictions upon a plea of guilty. Then para (c) directs that when an accused claims trial, the court shall hear 'all such evidence' as may be produced in support of the prosecution.

In our considered view, the expression 'all such evidence' is not confined to evidence which is available to the prosecution but which could not be produced for unavoidable reason at a specific date of hearing forming part of the trial. The term 'all such evidence' is to be given a broad interpretation and should also include evidence which can be produced at the continued hearing of the trial on a future occasion. Paragraph (d) guides the function of the court to issue summons. Paragraph (e) confirms the traditional right of the accused to cross-examine witnesses against him. The criterion for acquittal or conviction is stated in the next para (f).

The following para (g) is the crucial one for discussion in this case. The court may discharge the accused (not acquit) if the court considers the charge to be groundless. The magistrate will have to record the reasons for his decision. If he discharges the accused, there is nothing to prevent the prosecution re-charging the accused. The reason for the discharge may be that the magistrate finds he has no jurisdiction or the charge does not disclose any offence known to the Penal Code or other written law. The only circumstances under which an accused can be acquitted are those stated in para (f) and when the prosecution offers no further evidence because it feels that the prosecution case has collapsed prematurely. There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of the record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise

such vast powers, trespassing into the public prosecutor's area.

On the other hand, as an alternate remedy an aggrieved party may make appropriate representations to the public prosecutor for redress against alleged illegality. Such instances are not envisaged normally as the public prosecutor and their representatives are expected to perform their function diligently, honestly, impartially in the public interest.

In this reference we are not concerned with other paragraphs of s 173. Our considered opinion is that the English doctrine of inherent jurisdiction is hardly applicable in the subordinate courts but the High Court may invoke such prerogative powers in rare instances where it is right to do justice to the accused. As an instance of the High Court invoking the doctrine of inherent power, we are aware of the instance referred to in *PP* v *Lee Tin Bau*.[1] The circumstances of the case referred to therein were manifestly different and counsel's plea was supported by the evidence of the accused and the judge's own investigation. There is hardly any room for transplantation of any English practice or other systems of law in the magistrate's court under the Code.

In matters like criminal law of a purely domestic nature, our view is that the court will only exercise its inherent powers when there is miscarriage of justice. The court must be careful that the decision is not in conflict with the intention of the legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.

Before we decide this reference, we direct our attention to the implication of the facts in this case. It is quite obvious to us that whatever be the deeper reasons behind the delay, certainly the prosecution did not contribute to such delay. There is no evidence by any stretch of imagination that the Attorney General or the prosecution acted in a spirit of harassment against the accused at all. We also like to say that there are no circumstances whereby the issues of autrofois acquit or convict and estoppel arise.

In all the factual and legal circumstances we have already explained, we are left with no choice but to answer in the negative to the question posed to us, however badly it is framed. To the specific question 'whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings' we answer 'No' in the specific circumstances of the facts of the case under reference. We feel that the question is ambiguous. Therefore, our answer is not to be construed as limiting the constitutional function of the courts. Among other things, it is questionable what is meant by the term 'court' as inherent powers are normally exercised by the High Court and not the magistrate's courts. The word 'court' is not specified in the question as to which particular structure the poser refers. Another question is why the question refers to 'striking out' only specifically omitting other prerogative remedies. It is also not clear at what stage the applicants expect the court to exercise its powers. Is it at the beginning of the case or after all prosecution evidence is adduced as Peh Swee Chin J indicated when the matter came before him by way of revision? We do not feel that the court should answer questions hypothetically and carte blanche. To avoid any doubt in future, we should clarify that we have and will not abdicate our responsibility to act as a watchdog within constitutional limits to ensure that any authority do not ultra vires. Legislature, when creating codes, can only foresee the most natural and ordinary events and no rule can regulate for all the time and for all the circumstances to protect citizens against all modes of inconvenience and discomfort which are finite in number. In the case of obvious abuses or other forms of material defects, it cannot be said that the High Court does not possess the powers to do the right and to undo wrong in the course of administration. We therefore feel that in law there is no obstacle for the case against the accused to be continued in the normal manner. At the same time, under the particular circumstances obvious from the records, the Attorney General may, a matter entirely for him alone to decide, consider exercising his discretion to enter a *nolle prosequi* in view of the delay and other circumstances. Insofar as this court is concerned, we have no power vested in us to interfere with his discretion.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*